

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Request of Northern States
Power Company d/b/a Xcel Energy for
Approval of a Renewable Development Fund
Oversight Process

ISSUE DATE: July 29, 2003

DOCKET NO. E-002/M-00-1583

ORDER REVISING OPERATIONAL
GUIDELINES AND OVERSIGHT
PROCEDURES AND REQUIRING
FURTHER FILINGS

PROCEDURAL HISTORY

On April 20, 2001 the Commission issued an Order in this case approving and modifying Xcel Energy's proposal for the establishment, operation, and regulatory oversight of a fund for the development of renewable energy sources. The Company is required by law to establish and administer this fund as a condition of storing spent nuclear fuel in dry casks at its Prairie Island nuclear power plant. Minn. Stat. § 116C.779. The statute requires the Company to deposit \$16,000,000 into the fund during each year that the Prairie Island plant is in operation.

The April 20, 2001 Order established operating procedures for the Renewable Development Fund, eligibility conditions for projects seeking support from the Fund, and a framework for regulatory oversight of Fund operations.

In subsequent Orders in this docket the Commission approved projects selected for funding, authorized disbursement of Fund monies, and permitted rate recovery of Fund costs through an automatic rate adjustment, as required by statute.¹ The Commission also required the Renewable Development Fund Board to file a report at the end of the first funding cycle summarizing lessons learned and outlining any proposed process improvements.²

On March 12, 2003, Xcel Energy submitted the Board's report on the first funding cycle. The Board concluded that the first funding cycle had been successful, awarding a total of \$15,500,000 to 18 renewable energy projects. Together, these projects produce over 50,000-megawatt hours of renewable energy each year and accelerate the deployment of new renewable technologies. The report also recommended process revisions and refinements based on experience with the first funding cycle.

¹ Minn. Stat. § 216B.1645, subd. 2.

² Order Approving Selected RDF Projects and Requiring Filing on Process Improvements, this docket, April 3, 2002.

The following parties filed comments on the Board's report: the Minnesota Department of Commerce, the Energy & Environmental Research Center of the University of North Dakota, the Prairie Island Indian Community, Itasca Power Company, and the Minnesota Department of Agriculture. Disputed issues were few and will be discussed below.

On June 26, 2003, the report came before the Commission.

FINDINGS AND CONCLUSIONS

I. The Board's Report and Recommendations

The current procedures for operating the Renewable Development Fund, for soliciting applications for funding from renewable energy projects, and for deciding which projects to fund, were set after a collaborative process in which Xcel Energy and the environmental community were the main participants. The Commission approved the procedures recommended by these parties with minor modifications in its initial Order of April 20, 2001.

Under the terms of that Order, the Renewable Development Fund Board is made up of two representatives appointed by Xcel Energy and two representatives appointed by the Minnesota environmental community. In brief, the Board solicits requests for proposals for the development of renewable energy sources; reviews proposals using selection criteria approved by the Commission; selects projects for funding, subject to requests for reconsideration by Xcel and approval by the Commission; and delegates contract negotiation and execution to Xcel.

In the lessons learned report filed at the end of the first funding cycle, the Board recommended changes in the operational and oversight procedures approved in the initial Order. These recommendations are summarized below.

1. Adopt two goals as the overall goals of the Fund: to encourage the development of renewable energy projects that may not otherwise be developed and to encourage the development of a variety of types of renewable energy.
2. Add a fifth Board member representing the Prairie Island Indian Community, close neighbors of the Prairie Island nuclear power plant, whose interest in renewable energy played a critical role in enactment of the Renewable Development Fund.
3. Develop a separation agreement to be signed by all Board members to prevent potential conflicts of interest when Board members share an affiliation with a project applicant.
4. Streamline regulatory oversight by shifting substantive Commission review from the contract execution stage to the project selection stage.
5. Clarify eligibility criteria and funding priorities in the next Request for Proposals as follows:
 - a. Identify four eligible technologies: biomass, wind, solar, and small hydro.
 - b. State a preference for biomass projects.

- c. Limit the eligibility of biomass projects to those under 12 megawatts;
 - d. Limit the eligibility of wind projects to those under 2 megawatts and encourage proposals that include some novel concept, approach, setting, or application.
 - e. Limit the eligibility of solar projects to those under 4 kilowatts to avoid duplicating the benefits of a solar rebate program run by the Department of Commerce.
 - f. Exclude renewable education projects.
 - g. Exclude projects involving the use of biodiesel fuel blends.
6. Combine current project categories B and C – labeled “Experimental Technology” and “Research and Development” – into a single category labeled “Research and Development.”
 7. Clarify geographical preferences as follows: limit self-generation projects to those within Xcel’s Minnesota service territory, limit commercial generation projects to those able to deliver power to a delivery point on Xcel’s system, and develop a process for giving preference to research and development projects proposed by Minnesota institutions.
 8. Develop a scoring mechanism to give projects sponsored by the Prairie Island Indian Community a preference.
 9. Limit funding for individual projects to \$2,000,000 for energy production projects and \$1,000,000 for research and development projects.
 10. Encourage leveraging by limiting funding for individual energy production projects to 50% of the project’s total capital costs and by refining scoring procedures to evaluate cost-effectiveness on a sliding scale that favors projects requesting smaller percentages of their total capital costs.
 11. Set maximum purchased power rates for energy production projects.
 12. Retain an independent expert to provide technical advisory services in evaluating research and development projects.
 13. Streamline regulatory oversight by substituting a status report for the first two filings in the current process (the list of eligible applicants and the list of short-listed projects).
 14. Issue future requests for proposals on a flexible schedule tied to the completion of the previous funding cycle, instead of on a calendar year schedule.
 15. Intensify marketing and publicity efforts to increase participation in the RDF program.
 16. Revise the terms of grant contracts to give Xcel ownership of green credits in an amount proportional to its level of funding, to prohibit contract substitutions, to prohibit contract exceptions altering risk allocations between Xcel and the contractor, and to decline to subordinate Xcel’s march-in rights to any co-sponsor whose proportional contribution is lower than Xcel’s.

II. Parties' Comments, Commission Action

The parties who commented on the Board's report concurred in most of the Board's conclusions and recommendations. Parties' comments are summarized below, together with Commission action on contested issues.

A. The Department of Commerce

The Department of Commerce agreed with most of the process and operational revisions proposed by the Board, opposing only three: (1) the proposal to limit the eligibility of solar projects to those under four kilowatts; (2) the proposal to cap funding for energy production projects at 50% of total capital costs; and (3) the proposal to use a sliding scale to award higher cost-effectiveness ratings to projects seeking smaller percentages of their total costs from the Fund. By the date of hearing, the agency and the Board had reached agreement on the first issue and were making progress on resolving the other two.

They asked the Commission to approve their agreement to eliminate the four-kilowatt limit for solar projects, proposing instead to bar projects receiving funds under Department of Commerce programs from receiving additional RDF funding. The Commission agrees that this is a reasonable and effective approach and will approve the agreement.

They also asked the Commission to defer action on the issues of capping the percentage of capital costs payable to energy production projects and measuring the cost-effectiveness of proposed projects, saying these are complex issues requiring further discussion. The Commission agrees and will defer action on these issues to give the parties time to explore them further.

B. The Prairie Island Indian Community

The Prairie Island Indian Community filed comments urging acceptance of the proposals to add a Community representative to the Board and to grant a 10% preference to proposed projects sponsored by the Community. The Commission agrees that both proposals are reasonable and in the public interest.

Both proposals help effectuate the Legislature's intent to recognize the Community's special status as a close neighbor of the plant, to draw upon its expertise and commitment to renewable energy, and to ensure that its concerns are given careful consideration. The proposals will be approved.

C. Itasca Power Company and the Minnesota Department of Agriculture

The Renewable Development Fund Board proposed to exclude projects using biodiesel fuel blends on grounds that biodiesel technologies were more appropriately used for transportation than for generation.

Itasca Power Company opposed the exclusion, arguing that proposed projects should be evaluated on their own merits, not on the basis of a predetermined philosophical position. The Minnesota Department of Agriculture concurred. The Department of Agriculture also argued that the state has identified biodiesel technology as an economic development priority and that a blanket exclusion of biodiesel projects from the Renewable Development Fund program works at cross purposes with the state's economic development goals.

The Commission will not approve the exclusion of biodiesel projects at this point in its review of Fund procedures. Minnesota's commitment to fully exploring the potential uses of biodiesel fuels is clear. It is equally clear that the across-the-board ban on biodiesel projects proposed by the Board is inconsistent with that commitment, in the absence of a fact-intensive, thoughtful examination of the issues posed by the ban. It is not clear that that examination has taken place – at hearing, Xcel proposed that the full Board, which was not present, meet with representatives of the biodiesel industry to jointly explore the issues and report back to the Commission in a compliance filing.

The Commission will therefore not approve the exclusion of biodiesel projects at this time, but will permit the Board to submit supplementary information on the issue as part of its compliance filing.

D. Itasca Power Company

Itasca Power Company raised three additional objections to the process and operational revisions proposed by the Board. The company opposed the Board's proposal to limit the eligibility of biomass projects to those under 12 megawatts, especially in light of the Board's proposal to limit funding to 50% of total capital costs. The company suggested that the Board fine-tune its cost-effectiveness measures to factor in the intermittent nature of wind power. And the company suggested that wind was now commercially viable and should no longer receive development funding.

Most of these issues will be addressed in discussions between the Board and the parties as the Board prepares its compliance filing. The Board has asked for additional time to work with stakeholders to reexamine its approach to cost-effectiveness, including its proposal to limit funding to 50% of any project's total capital costs. These discussions may well allay Itasca's concerns about measuring the cost-effectiveness of wind and about coupling the 50% funding cap with the 12-megawatt limit on biomass projects.

Finally, the Commission notes that the Board recognizes the growing commercial viability of wind generation by limiting funding for wind projects to those under two megawatts, which are the least commercially viable, and by encouraging wind projects featuring novel concepts, approaches, or applications. Given this level of awareness, there is no current need to give the Board further direction in its treatment of wind generation.

E. Energy & Environmental Research Center of the University of North Dakota

The Energy & Environmental Research Center (the EERC) raised three concerns about the contracting process and one concern about granting preference to Minnesota institutions when awarding research and development grants.

The contractual concerns related to "march-in rights," intellectual property rights that arise when projects have more than one funding source; milestone payment schedules, which require strict adherence to performance schedules as projects progress; and the interval between the issuance of the original Request for Proposals and the application deadline, which EERC considered too short. Since these are all issues that the Board recognizes as important and intends to explore in the near term with stakeholders, action at this time would be premature.

Similarly, the Board has yet to develop procedures for granting preference to Minnesota institutions seeking research and development grants. That preference is grounded in statute;³ in the Board's greater familiarity with in-state institutions (which facilitates ease of administration and effective oversight); and in the knowledge that in-state institutions will be most familiar with local conditions and most likely to develop technologies amenable to local conditions. At this point there are no grounds to assume that the preference procedures ultimately developed will not be fair, appropriate, and in the public interest.

III. The Revised Process

In broad outlines, the revised operational and oversight process, as proposed by the Board and revised in response to stakeholder and staff comments, is summarized below. The Commission approves and adopts this process.

Board Make-up and Separation Agreement

- The Board is expanded to five members to include a representative of the Prairie Island Indian Community.
- The Board will develop and file a separation agreement to be signed by all Board members to prevent potential conflicts of interest when Board members share an affiliation with a project applicant.

Project Selection and Regulatory Oversight

- The Commission reviews and approves selection criteria.
- A Board is created to oversee the selection process, including the development of a Request for Proposals based on the selection criteria, applying the selection criteria, and assisting in the selection of winning bids.
- The Board develops a Request for Proposals, which will be submitted to the Commission.
- Within 32 days of the filing date, Xcel issues the Request for Proposals, unless the Commission directs otherwise.
- Xcel files an informational status report with the Commission.
- The Board has oversight and provides a final selection recommendation, which shall be deemed to be conclusive and result in selection by Xcel unless Xcel requests reconsideration by the Board of the decision. Xcel makes any request for reconsideration to the Board within 14 days of receiving the Board's final selection recommendation.
- Xcel submits final proposal selections to the Commission for approval.

³ Minn. Stat. § 116C.779, subd. 1.

- Xcel enters into negotiations for grant contracts with the selected entities; in the event of an impasse in negotiations, Xcel notifies the Board in order to determine whether to move to another selection or to otherwise proceed.
- Xcel will file all grant contracts with the Commission and the Department for compliance with the final selection.
- The Board submits biennial progress reports to the Commission and the Legislature addressing the operation of the Renewable Development Fund.

Selection Criteria and Operational Guidelines for the Second Funding Cycle

- The two overall goals for the second round of funding will be to encourage the development of renewable energy projects that may not otherwise be developed and to encourage the development of a variety of types of renewable energy.
- Eligible technologies will be biomass, wind, solar photovoltaic, and hydro.
- Renewable education projects will not be eligible for funding.
- Eligible biomass and hydro projects must be under 12 megawatts.
- Preference will be given to biomass development projects and research and development projects.
- Eligible wind energy development projects must be under two megawatts.
- There will be two project categories: energy production projects and research and development projects.
- Target allocations will be as follows: 60% of available funds to energy production projects and 40% of available funds to research and development projects, with the understanding that the Board may deviate from these target allocations if warranted, and if supported.
- Eligible self-generation projects must be located within Xcel's Minnesota service territory; eligible projects proposing to sell energy to Xcel, and located outside its territory, must be able to deliver power to a delivery point on the Xcel system.
- The Board will develop a mechanism for giving preference to Minnesota institutions for research and development projects, while continuing funding awards to research institutions outside the state.
- The maximum funding level for individual projects will be \$2,000,000 for energy production projects and \$1,000,000 for research and development projects.
- Solar projects intending to request funds under existing Department of Commerce programs will not be eligible to receive additional monies from the Renewable Development Fund.

- Projects sponsored by the Prairie Island Indian Community will receive a 10% bonus in the competitive selection process.
- Xcel will issue the Request for Proposals for the second funding cycle by the end of the fourth quarter of 2003.
- If Xcel retains the services of a project evaluator, it will use an independent evaluator or organization, who will not otherwise participate in the Renewable Development Fund bid process.

IV. Compliance Filing

Developing criteria and procedures for selecting and funding projects representing an annual ratepayer investment of \$16,000,000 is a complex and necessarily iterative process. The Commission will therefore require the Board to make a compliance filing addressing in detail the issues on which the record is not yet fully developed, including those listed below:

- The selection criteria the Board proposes to use in the second funding cycle, including the mechanism by which the Board will grant preference to biomass development projects and research and development projects;
- The separation agreement the Board intends to ask members to sign;
- The mechanism the Board proposes to use to grant preference to Minnesota institutions seeking research and development grants;
- The results of discussions between the Board, the Department of Commerce, and other stakeholders on capital cost funding caps, leveraging requirements, and cost-effectiveness metrics;
- Any operational or process changes required by legislation enacted during the 2003 legislative session.

The Commission will so order.

ORDER

1. The Commission approves the proposed operational and oversight guidelines filed by the Renewable Development Fund Board, as modified above. The Renewable Development Fund Board and Xcel Energy shall comply with the provisions of these guidelines in the conduct of their operations.
2. On or before August 8, 2003, Xcel Energy and/or the Renewable Development Fund Board shall file the documents and information set forth below:
 - (a) The selection criteria the Board proposes to use in the second funding cycle, including the mechanism by which the Board will grant preference to biomass development projects and research and development projects;

- (b) The separation agreement the Board intends to ask members to sign;
 - (c) The mechanism the Board proposes to use to grant preference to Minnesota institutions seeking research and development grants;
 - (d) The results of discussions between the Board, the Department of Commerce, and other stakeholders on capitol cost funding caps, leveraging requirements, and cost-effectiveness metrics;
 - (e) Any operational or process changes in Renewable Development Fund operations required by legislation enacted during the 2003 legislative session.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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